



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended	January 7, 2002	Bill No:	AB 13
Tax:	Hazardous Substances	Author:	Florez
Board Position:	Co-sponsor	Related Bills:	AB 61 (Florez)

BILL SUMMARY

Among other things, this bill would provide that a facility operator is relieved from the liability to collect the hazardous waste disposal fee if the charge is represented by an account that is found to be worthless and charged off for income tax purposes.

ANALYSIS

Current Law

Under existing law, Section 25174.1 of the Health and Safety Code imposes a fee on each person who disposes of hazardous waste in the state. This section also requires each operator of a hazardous waste facility at which hazardous wastes are disposed to collect the fee from each person submitting hazardous waste for disposal and transmit the fees to the Board. The facility operator, however, is not required to collect and transmit the fee for a hazardous waste if the operator maintains written evidence that the hazardous waste is eligible for a specified exemption.

Existing law further provides that the facility operator shall be considered the taxpayer for purposes of the requirement that each taxpayer make out a tax return for the calendar month and deliver the return, together with remittance of the amount to the Board by a specified time.

The disposal fees collected pursuant to Section 25174.1 are deposited into the Hazardous Waste Control Account in the General Fund.

Proposed Law

This bill would add Section 25174.12 to the Revenue and Taxation Code to provide that:

- A facility operator is relieved from the liability to collect the fee due to the extent that the charge for the disposal of the tonnage of hazardous waste upon which the fee is imposed is represented by an account that is found to be worthless and charged off for income tax purposes or, if the facility operator is not required to file income tax returns, charged off in accordance with generally accepted accounting principles (GAAP).

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- If the facility operator has previously paid the fee, the facility operator may take as a credit the amount of the fee found to be worthless and charged off in the manner prescribed by the Board. If any of those accounts are thereafter, in whole or in part, collected by the facility operator, the portion of the fee as calculated shall be included in the first return filed after that collection and the fee paid with the return.
- In determining the amount to be deducted, claimed as a credit, or remitted, all payments and credits to the account of the person who submitted the hazardous waste to the facility for the disposal shall be applied to the fee imposed in the same proportion as the amount received bears to the total amount the facility operator charged the person, including all taxes and fees.

This bill would also amend Section 25174.1 to clarify that each person who disposes of hazardous waste is liable for the fee until that person pays that fee to the state or to an operator of an authorized hazardous waste facility.

This bill would also make other non-substantive technical changes.

In General

The disposal fee is one of five hazardous waste fee programs administered by the Board in cooperation with the Department of Toxic Substances Control. The disposal fee program currently has 12 registrants (facility operators), all of which would be affected by this bill.

Under current law, these 12 facility operators are required to collect a fee from any person submitting hazardous waste for disposal and transmit the fees to the Board for the disposal of those wastes. This method of collection places the ultimate liability for collection of the fee with the operator as the operator is considered a “taxpayer” for purposes of Section 43151 of the Revenue and Taxation Code. Accordingly, if a person disposing of hazardous waste issues a bad check or does not pay the operator, the operator is still required to report those wastes as subject to the tax and remit that tax to the Board.

Background

In 1989, Senate Bill 475 (Stats. 1989, Ch. 269) added Section 25174.1 to the Health and Safety Code. In general, Section 25174.1 provided that each person who disposed of hazardous waste, or who annually submitted more than 500 pounds of hazardous waste for disposal in the state, pay a fee for disposal to the Board for deposit into the Hazardous Waste Control Account. An operator of a facility that generated and disposed of hazardous waste was also required to pay the fee directly to the Board. In addition, an operator of a facility, at which hazardous waste was disposed, paid a fee directly to the Board except that the site operator was not required to pay the fee for hazardous waste if the person submitting the waste for disposal provided the operator with a properly completed manifest which included a Board account number.

Senate Bill 1222 (Stats. 1995, Ch. 638) amended Section 25174.1 to require each person who disposed of hazardous waste to land to pay a disposal fee based on the type of waste placed into the disposal site at the time of disposal. In addition, that bill

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required the disposal facility to collect the fee from each person submitting waste for disposal and pay the fee to the Board. Any cost savings realized as a result of SB 1222 was required to be transferred to the Department of Toxic Substances Control. It was the intent of the Legislature that the reduction be in the amount of at least \$1.5 million per fiscal year during which the amendments contained in SB 1222 were in effect.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Board and Waste Management, Inc. and is intended to add provisions to the Hazardous Substances Tax Law authorizing a facility operator to claim a credit or refund of the fee it paid in those cases where it was unable to collect the fee from its customer. Such provisions would be similar to provisions in the Sales and Use Tax Law and other taxes and fees administered by the Board.

The proposed language, which is similar to the legislative proposal adopted by the Members of the Board during their October 31, 2000 Legislative Committee meeting, was agreed upon between the Board and Waste Management, Inc.

2. **This bill is consistent with certain other taxes and fees administered by the Board.** For the privilege of selling tangible personal property at retail, current law imposes a sales tax upon a retailer. The retailer is responsible for reporting and paying the retail sales tax. Current law allows a retailer to claim a bad debt deduction for previously reported taxable sales if he or she does not receive total compensation for the retail sale transaction. If a retailer only collected a portion of the amount reported as taxable, a partial deduction may also be claimed for that portion found to be uncollectible.

This bill would extend to the Hazardous Substances Tax Law bad debt provisions similar to the provisions in the Sales and Use Tax and other taxes and fees administered by the Board. In addition, this bill would specify that the amount collected by the operator would be applied to the fee in the same proportion as the amount received bears to the total amount the facility operator charged the person, including all taxes and fees.

4. **Board staff does not foresee any administrative problems with this measure.** Extending to the Hazardous Substances Tax Law bad debt provisions similar to the provisions in the Sales and Use Tax and other taxes and fees administered by the Board would not materially affect the Board's administration of the Hazardous Substances Tax Law.
5. **Related legislation.** This bill contains language similar to the May 14, 2001, version of AB 61 (Florez). These provisions, however, were amended from that bill on June 28, 2000.

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COST ESTIMATE

The administrative costs associated with this bill would include notifying registrants (facility operators), training Board staff, revising returns, processing credit returns, and collection efforts. These costs would be absorbable.

REVENUE ESTIMATE

It is expected that any loss of revenue associated with this measure would be minimal for the following reasons:

- It is the Board's understanding that if an operator has been unable to collect an amount due from a person for hazardous waste submitted to its facility, it will either not allow that person to continue to submit waste at its facility, or require up-front payment.
- An operator would take reasonable steps to collect the debt because it wants to collect the amount due for the disposal of hazardous waste. This bill would require that any amount collected by the operator be applied to the fee in the same proportion as the amount received bears to the total amount the facility operator charged the person, including all taxes and fees.
- The Board has the authority to collect the amount claimed by an operator as a bad debt directly from the person who failed to remit such payment to the operator.
- Any loss of revenue associated with this proposal would result from a few accounts from which the Board is not able to collect.

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